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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/757,069
Filing Date: January 14, 2004
Appellant(s): TOPITZES ET AL.

MAILED
JUL 31 2007
Group 3700

Callie M. Bell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/19/2007 appealing from the Office action mailed 11/2/2006.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,619,264	Czopor, Jr.	10-1986
4,621,404	Browning	11-1986
5,012,928	Proffitt et al.	5-1991
4,674,628	Prinsloo et al.	6-1987

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor, Jr. (US Pat 4,619,364) in view of Browning (US Pat 4,621,404).

With respect to claims 1, 11 and 21, Czopor discloses all of the limitations of the claims (as can be seen in the 1st office action dated 5/16/06) except for a reinforcement rib extending from a first edge of the ceiling to a second edge of the ceiling, the second edge opposed to the first edge. However, Browning discloses a ceiling/first molded piece (Browning Fig 1 ref 10) having a reinforcement rib (50) extending from a first edge of the ceiling to a second edge of the ceiling, the second edge opposed to the first edge for the purpose of providing additional strength and rigidity to the ceiling/first molded section (column 4, lines 41-46). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ceiling of Czopor to include a reinforcement rib across opposed first and second edges, as taught by Browning, for providing better structural integrity and additional support against impact forces that may damage the contents of the holder.

Claims 3, 5, 6, 13, 15, 16, 23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor '364 in view of Browning '404 as applied to claims 1, 11 and 21 above and further in view of Proffitt et al., (US Pat 5,012,928).

With respect to claims 3, 13 and 23, Czopor as modified above does not disclose that cut score lines extend partially through the hinge. However, Proffitt discloses a thermoformed plastic container comprising a cover and a platform integrally connected by a hinge with cut score lines (Proffitt column 3 lines 8-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hinge of Czopor as modified to include cut score lines, as taught by Proffitt, for the purpose of more easily separating the cover from the platform if desired.

With respect to claims 5, 6, 15, 16, 25 and 26 Czopor discloses that each receptacle has an integrally formed first and second protrusion to narrow the width at the first and second protrusion (Czopor Fig 1 reference number 36).

Claims 7-10, 17-20 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czopor '364 in view of Browning '404 and Proffitt et al., '928 as applied to claims 1, 3, 5, 6, 11, 13, 15, 16, 21, 23, 25 and 26 above and further of Prinsloo et al., (US Pat 4,674,628).

With respect to claims 7, 17 and 27, Czopor as modified above does not disclose that the protrusions narrow the width at a common distance along the length. However, Prinsloo discloses a card holding device having slots (Prinsloo Fig 2 reference number 28) with protrusions (34, 36) that narrow the width a common distance along the length so that a card can be inserted between them and gripped (column 4 lines 2-5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the protrusions of Czopor as modified so that they align to narrow the width a common distance along the length of the receptacle for better gripping of the contents to be inserted.

With respect to claims 8, 9, 18, 19, 28 and 29, while Czopor as modified above does not disclose that the common distance is at a midpoint of the length or offset from the midpoint by one-quarter of the length, it would have been an obvious matter of design choice to one of ordinary skill in the art at the time of the invention to have the protrusions placed at the midpoint of the length or one-quarter of the length from the midpoint, since Applicant has not disclosed that by doing so solves any state problem or is for any particular purpose and it appears that the invention would perform equally well (gripping the contents) with the staggered protrusion arrangement as shown in Fig 1 of Czopor.

With respect to claims 10, 20 and 30, while Czopor as modified above does not disclose that the first and second receptacle walls have integral third and fourth protrusions at a distance offset from the midpoint by one-quarter of the length, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include additional protrusions within the receptacle at various points from the midpoint to increase the gripping capability to better retain a badge/card/license within that receptacle, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

(10) Response to Argument

Appellant's arguments have been carefully considered, but are not persuasive for the following reasons:

Contrary to appellant's argument that there is no motivation to combine Czopor with Browning because Czopor and Browning are not directed to analogous art: It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Czopor and Browning are directed to related containers for holding and transporting articles. It would have been obvious to one of ordinary skill in the art to combine the references as they are related art, and the artisan is reasonably expected to have knowledge of the pertinent art.

Contrary to appellant's argument that there is not a reasonable expectation of success in combining Czopor with Browning: It is well known that providing a rib to a structure such as that of Czopor, Jr., regardless as to how or by what method the structure is formed, will provide the structure with better structural integrity and additional support against damage caused by impact forces. Moreover, and as an aside, providing a rib to a structure for added strength is a rudimentary engineering concept that contains no novelty.

Art Unit: 3728

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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7/19/2007

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